

WEBINAR WEDNESDAYS



Wednesday, July 14, 2021

Beyond the Courtroom Doors: Working with Victims Post-Conviction in Appellate Cases

Presented by:

Amy Bocks

Advocate Program Manager
Attorney General's Office of Victim Services

&


Linley Wilson

Criminal Appeals Section Chief Counsel
Arizona Attorney General's Office

Distributed by:

ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL
3838 N. Central Ave., Suite 850
Phoenix, Arizona 85012

ELIZABETH BURTON ORTIZ
EXECUTIVE DIRECTOR



ADVOCATING AFTER TRIAL
ASSISTING VICTIMS IN POST-CONVICTION APPEALS

Linley Wilson
Deputy Solicitor General, Criminal Appeals
Section Chief


Amy Bocks
Advocate Program Manager, Office of Victim
Services

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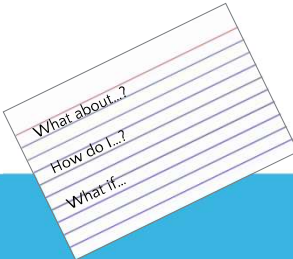

Law & Order, Wolf Films, NBC Universal

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SESSION OBJECTIVES

- Discuss how trial prosecutors & advocates can prepare victims for the appellate process
- Review victims' rights at the appellate stage
- Explore advocacy in appeals
 - Direct appeals
 - PCRs / Rule 32
 - Federal appeals
 - Capital / death penalty appeals



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PREPARING VICTIMS

When do you bring up appeals for victims?

During Trial

During Pre-Sentencing

Following Sentencing



ALL THREE

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POST-CONVICTION NOTIFICATION REQUEST FORM

SENTENCING RESULTS:
JAIL AND/OR PROBATION:


As a victim of crime, you have the right to be notified of sentencing results. Please see the next page for more detailed information.

IF YOU DO NOT WISH TO RECEIVE POST-CONVICTION NOTIFICATION, YOU DO NOT NEED TO COMPLETE OR RETURN THIS FORM.

INSTRUCTIONS:

1. Complete Section 1 and attach to the original sentencing results.
2. Mail or deliver to the appropriate agency listed below.
3. Keep Pages 1 and 2, along with a copy of Page 3, for your records.
4. If you are a victim of crime, you must also complete and attach the following information to the original sentencing results:
 - A. Identification of the victim (name, address, phone number, date of birth, and sex).
 - B. If the victim is a minor, you must also provide the name and address of the parent or guardian.

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Case County Attorney's Office
Victim Notification Secretary
130 E. Cherry Ave.
Flagstaff, AZ 86001
Phone: (928) 679-8000 Fax: (928) 679-8001

Arizona Department of Corrections,
Rehabilitation & Security
Attn: Victim Services
3305 W. Jefferson (MAC295)
Phoenix, AZ 85007
(602) 542-1853 or (602) 797-7233

Casa County Adult Probation
Victim Notification Unit
131 E. Cherry Ave.
Flagstaff, AZ 86001
(928) 679-8000 or
msh@casacountyaz.gov

Arizona Attorney General's Office
Office of Victim Services
2005 N. Central Ave.
Phoenix, AZ 85004
(602) 542-4911 or (602) 742-4911
agov@azag.state.az.us

Arizona Board of Executive Clemency
1645 W. Jefferson, Suite 301
Phoenix, AZ 85007
(602) 542-5666

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Prosecutorial Agencies Responsible for State Court Convictions in Arizona

Trial Proceedings → **Appeal*** → **Post-Conviction Relief**

County Attorney's Office
(AG's Office in some cases)


Attorney General's Office

County Attorney's Office
(AG's Office if originally prosecuted by AG)

**Includes Appeals in AZ Court of Appeals and sometimes appeals in AZ Supreme Court*

Habeas Corpus Proceedings (federal court)

Attorney General's Office



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VICTIMS' RIGHTS AND APPEALS

Victims' Bill of Rights, Arizona Constitution, Article 2, Section 2.1

A.R.S. § 13-4411 – Notice of post-conviction review and appellate proceedings

A.R.S. § 13-106 – Death of convicted defendant; dismissal of appellate and post-conviction proceedings

A.R.S. § 13-4042 – Appellate proceedings; request for extension; victim notification

A.R.S. § 13-4234.01 – Post-conviction relief proceedings; request for extension; victim notification



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APPEALS & VICTIM PRIVACY

Rule 31.10(f), Arizona Rules of Criminal Procedure
("Content of Briefs")

- (f) Substitute Victim Identifier. Appellate briefs must use a victim identifier in place of the victim's name in any case in which the defendant was charged with an offense listed in [A.R.S. §§ 13-1401 et seq.](#), [13-3201 et seq.](#), [13-3501 et seq.](#), or [13-3551 et seq.](#), or in any case in which the victim was a juvenile at the time of the offense. For purposes of this rule, "victim identifier" means a victim's initials, a pseudonym, or other substitute for the victim's actual name.



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APPEALS & VICTIM PRIVACY

We generally use pseudonyms instead of initials because it makes the briefs more readable.

STATE v. BERNAL
Decision of the Court

MEMORANDUM DECISION

Pending Judge Espinosa authored the decision of the Court, in which Judge Echeverria and Judge Bruneau concurred.

ESPINOSA, Presiding Judge:

¶1 Sergio Bernal appeals from his convictions and sentences for sexual abuse and sexual assault. He argues the trial court erred by asking the victim a question and permitting the state's follow-up, denying his motion for judgment of acquittal, and denying his request for pretrial psychological and psychosocial evaluations. We affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to upholding the jury's verdicts. *State v. Guechee*, 225 Ariz. 22, n.1 (2010). On December 15, 2018, Tina crossed the border between Mexico and the United States with the help of paid smugglers, "coyotes," and was taken to a trailer in Nogales, Arizona. Tina was instructed not to leave the trailer and to answer only to a specific nickname. Around 2:00 a.m., Bernal entered the trailer, addressed Tina by the nickname, and grabbed her breasts. He then, and over the course of two days at the trailer, twice "forced [her] to perform oral sex on him," twice "raped" her by forcing "[h]is penis into [her] vagina," and "raped [her] on the back" by sticking "his penis in [her] anus."

¶3 After being transported in a vehicle that was detained at an immigration checkpoint, Tina was questioned about some visible bruising and reported the sexual assaults to a border patrol agent and then a Nogales Police Department detective. She had injuries to her right cheek, both breasts, "acute tenderness and pain to palpation to the anus," and vulva, "consistent with blunt-force trauma." Bernal's DNA was found on Tina's right breast and underwear, but DNA testing was inconclusive as to vaginal and anal swabs.

"In this decision, we use the same pseudonym as the state has in its answering brief." See *Ariz. R. Crim. P. 31.10(f)* (requiring substitute victim identifier when defendant charged with certain offenses).




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Recent Arizona Supreme Court opinion interpreting abatement statute, A.R.S. § 13-106

State v. Reed, 248 Ariz. 72 (2020)

- Separation of powers opinion
- Legislature lacked authority to require appellate court to dismiss a pending appeal on convicted defendant's death - A.R.S. § 13-106(A)
- Legislature had authority to prohibit abatement of conviction and sentence - A.R.S. § 13-106(B)
- "Whether a conviction, sentence, restitution order, or fine should stand or abate when a convicted defendant dies pending appeal is a policy matter affecting competing interests and rights held by victims, the state, the defendant's family, and society."



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APPEALS ADVOCACY AND THE AGOVS

Procedures

- Opens a case on victim's request
- Initial contact
- Notice of appeal
- Notice of briefs
- Notice of outcome

Time frame

- 6 months → 30 years



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TRAUMA INFORMED APPROACH TO APPEALS ADVOCACY

Personal advocacy information Crisis response/intervention

Safety & security resources accessibility Financial assistance

Justice system advocacy confidentiality support empowerment

Victims' rights

The Four Rs of Trauma-Informed Care






Image adapted from Substance Abuse and Mental Health Administration (SAMHSA), 2014

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POST-CONVICTION ADVOCACY

CONTACT

methods
relationships
frequency

PERSONAL

restitution
property return
victim compensation

IN-PERSON ADVOCACY

meetings
oral arguments
evidentiary hearings

EMPATHETIC LISTENING

confusion
fear
anger



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CASE EXAMPLE

State v. Arias

Murder - meeting with deceased victim's family prior to appellate oral argument. Included the appellate attorney, OVS advocates, and answered questions about the claims on appeal, likelihood of success, etc.



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CASE EXAMPLE

State v. Louie T. Machado

Offense: October 2000 of a 16-year old girl
Sentenced: May 2008 (overturned)
March 2013 - 18 years (2,335 days' credit)

OVS involvement: since 2008



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CASE EXAMPLE

State v. Watson

Triple homicide - deceased victim's cousin questioned why Arizona Supreme Court remanded the case in light of another decision.

Unfortunately, a news article had suggested that the defendant's appeal was successful and that the court of appeals would reopen the case.



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CASE EXAMPLE

State v. Derek D. Chappell

Offense: murder of a toddler in March 2004
Sentenced: death sentence in 2007

OVS involvement: since 2008



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CAPITAL APPEALS ADVOCACY AND THE AGOVS

- Long-lasting working relationships
- Cultural implications
- Generational
- Appeals are cyclical and circular in nature
- Slow, slow, slow... until they're not
- Collaborative
- Executions




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TAKING IT HOME



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Office of Arizona Attorney General Mark Brnovich



Linley Wilson
Deputy Solicitor General &
Criminal Appeals Section Chief
Solicitor General's Office
Linley.Wilson@azag.gov

Amy Bocks, M.Ed.
Advocate Program Manager
Office of Victim Services
Amy.Bocks@azag.gov

www.azag.gov/criminal/victim-services/training



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